

Memorandum

To: The White House Council on Environmental Quality
Interagency Ocean Policy Group (IOPG) via email:
(c/o finalreport.comments@noaa.gov)
From: National Aquaculture Association
111 W Washington St Ste 1, Charles Town WV 25414
Tel. 304/728-2167 Fax. 304/728-2196
Date: November 1, 2004
Re: Comments on the U. S. Commission on Ocean Policy Final Report

The National Aquaculture Association (NAA) represents more than 5,000 members and affiliates in the U.S. aquaculture industry. The NAA focuses exclusively on aquaculture industry issues, and is the single largest aquaculture constituent organization in the United States.

The NAA submitted preliminary comments to the U.S. Commission on Ocean Policy as early as November 8, 2002, and those comments should be in the Commission record. The following are the NAA comments on changes reflected in the Final Report of September 2004.

Preface: Putting Food Production in Context

An important overarching principal to remember in all discussions of marine aquaculture is the need to produce food in U.S. waters. Food production security is a cornerstone of our national security. The U.S. seafood trade deficit has now reached \$7 billion per year. (Final Report, p. 285) As a society, we need to recognize that the primary objective of marine aquaculture production is food production in an economically viable and environmentally sustainable manner. The Preliminary Report noted that “[d]omestic aquaculture may provide a way to decrease U.S. dependence on imported seafood” and thereby address concerns regarding contaminated foreign fish. (Preliminary Report, Chap. 23, p. 283). The Final Report appears to have deleted this important statement, as it is not found in either Chapter 23, or the aquaculture chapter (Chapter 22). Nevertheless, the fact still remains that we cannot subject the production of wholesome fish protein for American consumers to the perils of foreign source availability or the fluctuations of domestic natural population harvests.

I. One Step Forward, Two Steps Back(How to Defeat U.S. Marine Aquaculture)

1. *The Final Report Changes its Tune*

The NAA leadership was pleased that the Commission’s Report dated April 2004 mirrored the opinion of the NAA that one significant potential impediment to development of a U.S. marine aquaculture industry should be eliminated. The Commission stated:

Another potential impediment, which increases the legal and economic risk for offshore aquaculture, is NOAA’s assertion, through an agency legal opinion, that aquaculture facilities in the exclusive economic zone are subject to the Magnuson-Stevens Fishery

Conservation and Management Act if the aquaculture operation uses any harvesting or support vessel. While the Magnuson-Stevens Act may not have been intended as a vehicle for managing marine aquaculture, such assertion of authority by NOAA contributes to an already muddled management regime.

(Preliminary Report, p. 272).

The referenced NOAA assertion and, frankly, any similar legislative authorization that effectively grants approval or veto authority over marine aquaculture facilities to the Fisheries Management Councils is a significant hurdle to development of aquaculture production facilities in federal marine waters.

The current application of Fisheries Management Council authority to aquaculture production facilities is based on a legal fiction under the exempted fishing permit regulations (permits for research of “fishing” issues). Product competitors such as capture fisheries representatives on the Councils should not be positioned to use their authority to prevent entry to the market[1][1]. Unfortunately, the Final Report was edited to delete the statement of concern regarding management of aquaculture by bodies created to manage wild stock fishing.

The Fisheries Management Councils should participate as commenters in the marine aquaculture permitting or leasing process administered by NOAA or other agencies. A proven model for similar interagency comment procedures can be found in the Corps of Engineers process for approval of structures in waters of the United States. Under section 10 of the Rivers and Harbors Act of 1899, and related regulations, the Corps solicits comments from other federal agencies on each application for an individual structure permit. The commenters include, among others, NOAA, U.S. EPA and the Fish and Wildlife Service. The Fisheries Management Council for the location proposed for an aquaculture facility could likewise provide useful comments on such an application submitted to NOAA and other agencies. But actual permit or approval authority should not be given to the Councils.

2. *Do Not Create New Regulatory Bodies*

The Ocean Commission reports conclude that the existing laws for permitting operations in U.S. waters are already too complicated. In fact, the first report suggested resolving the confusion created by oversight of aquaculture by the Fisheries Management Councils.

However, any regulatory improvements the Commission would provide to aquaculture are taken away with the proposal to create yet another entity to regulate marine aquaculture. The Commission envisions the existing interstate fishery commissions having a role to “coordinate” federal and state activities in federal waters. Creation of another layer of governmental authorities does not bode well for operation of a viable offshore regulatory system and runs contrary to assertions that the existing system is already too complicated.

The NAA reaffirms its 2002 recommendation that existing federal authorities and permit program should be integrated to regulate marine aquaculture. New regulatory bodies should not be created, and existing authorities should not be removed from other agencies to merge them into a single program. NOAA does not have the experience of the Corps of Engineers in structures permitting or the U.S.EPA in the regulation of effluents to U.S. waters. Any efforts to streamline the process should address inter-agency comment and coordination procedures between existing programs and should not create new agencies or bodies to regulate aquaculture.

3. *Addressing Uncertainty: What Standard for Approval?*

The Commission's Final Report includes a new conclusory statement in Chapter 22 concerning the potential environmental impacts of aquaculture. The Final Report states:

"All of the potential impacts discussed in this section need to be addressed if the nation is to achieve an environmentally and economically sustainable marine aquaculture industry." (emphasis added)

(Final Report, p. 286)

If the United States aquaculture industry is to produce food in federal waters, we must ensure that the focus is on meeting the environmental standards relevant to proposed operations. The review and approval of a proposed aquaculture facility should not hinge on whether unrelated policy disputes or research issues have been addressed.

There is no need to require a project proponent to resolve major policy disputes regarding the production of "genetically-modified" fish or "non-native" species if they have no intention of using such organisms or the facility permit prohibits use of such organisms. We do not need to resolve every "potential impacts" issue that can be imagined by aquaculture opponents unless such issues are reasonably related to the proposed project.

In addition, there is no reason to "reinvent the wheel." There already exists a great deal of valuable and reliable information relevant to an evaluation of marine aquaculture operations. Substantial information regarding potential water quality impacts is available from state environmental agencies and U.S. EPA based on their experiences in administering permits for aquaculture operations. The NOAA Sea Grant program and NOAA research facilities also have substantial relevant information on environmental impacts of finfish and shellfish production in marine waters. The U.S. EPA recently promulgated Clean Water Act regulations that include standards for production of salmon in marine waters, and the record includes the results of agency research.

II. Let's Keep Our Eye on the Ball: Food Production, not Politics.

One recommendation to amend federal law appears to have occurred to the Commission just in time for the Final Report. Aquaculture Recommendation 22-1 now suggests that

Congress “designate the Secretary of Commerce as a permanent co-chair, along with the Secretary of Agriculture, of the Joint Subcommittee on Aquaculture.” (Final Report, p. 288). The NAA suggests that the energies of the Congress and the Executive Branch would be better spent in focusing first on creation of a legislative program to facilitate development of U.S. aquaculture production facilities in federal waters. Other legislative efforts, if warranted, can be taken up after we determine if a federal marine aquaculture industry will exist.

The Joint Subcommittee on Aquaculture (JSA) was created by the National Aquaculture Act of 1980. (Public Law 96-362, 94 Stat. 1198). The stated purpose of the Act is to promote aquaculture in the United States, and the Congress declared that our national policy is to encourage the development of aquaculture in the United States. 16 U.S.C. 2801(b), 2801(c).

The Congress proposed to promote aquaculture, in part, by:

“establishing the Department of Agriculture as the lead Federal agency with respect to the coordination and dissemination of national aquaculture information by designating the Secretary of Agriculture as the permanent chairman of the coordinating group and by establishing a National Aquaculture Information Center within the Department of Agriculture.”

(26 U.S.C. 2801(b)).

The Joint Subcommittee on Aquaculture is an interagency aquaculture coordinating group within the Office of Science and Technology. (16 U.S.C. 2805(a)). The coordinating group membership established by statute includes the Secretary of Agriculture, the Secretary of Commerce, the Secretary of the Interior, the Secretary of Energy, the Secretary of Health and Human Services, the Administrator of the Environmental Protection Agency, and the Chief of Engineers, as well as representatives of the Small Business Administration, the Agency for International Development, the Tennessee Valley Authority, the National Science Foundation, and the Farm Credit Administration. (16 U.S.C. 2805(a)). To our knowledge, no other member of the coordinating group has felt the need to pursue the position of “co-chair.”

The Secretary of Commerce is already a member of the JSA and whether or not acting as a “co-chair” could propose to the JSA members any policies thought helpful to support marine aquaculture. To date, we know of no policies or initiatives recommended by the Secretary of Commerce to the JSA with respect to marine aquaculture, and we know of no existing legal impediment to the Secretary submitting proposals to the JSA going forward.

As an industry representative, NAA respectfully suggests that development of a program that fosters offshore aquaculture is the more important than modifying the JSA chairmanship. In addition, NOAA should focus on its existing policies before proposing to take the lead on marine aquaculture issues.

The Congress determined that aquaculture in the United States is inhibited by the lack of supportive Government policies. (16 U.S.C. 2801(a)(7)). It has to be said that U.S. marine aquaculture will not be created, and it would not survive international competition without

supportive government policies. This is not to say that we will not ensure that appropriate safeguards are in place to protect the environment, public health and our national and international responsibilities. But we must all agree that we have to support the effort or marine aquaculture will not exist.

Prior to focusing on gaining co-chairmanship of the JSA, the Secretary of Commerce should direct NOAA to conform its policies and positions to reflect unequivocal support of commercial aquaculture production, similar to its support for commercial fishing, in an environmentally responsible manner. To be candid, the potential competition between aquaculture and commercial fishing will be a political challenge to any single agency responsible for both industries. But existing NOAA policies do not suggest a level playing field.

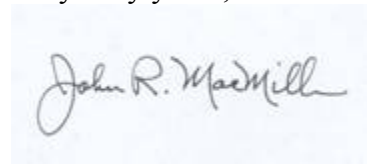
NOAA's most recent Fisheries Strategic Plan (FY 2003 - FY 2008) was issued on July 8, 2003, more than two years after the Ocean Commission (and Pew Ocean Commission) began reviewing ocean policy. This NOAA Strategic Plan was released two months before the Ocean Commission proposed that the Secretary of Commerce co-chair the JSA.

Unfortunately, NOAA's Strategic Plan begins by describing aquaculture as "a research priority for potential stock enhancement." (NOAA Strategic Plan, p.9).[2][2] The Plan includes several references to agendas, regulatory infrastructure, environmental standards and a Code of Conduct for aquaculture. Id. However, there is no clear affirmation that the Strategic Plan of NOAA Fisheries includes support for a robust and significant production capability in offshore aquaculture.

NOAA's pending draft strategic plan for FY 2005 – FY 2010 also presents tepid support and minimal goals for offshore aquaculture, and identifies research and legislation as targets that reach out over the next five years. In times past, NOAA was purportedly more ambitious in its goals for marine aquaculture, proposing a marine aquaculture production target of \$5 billion of U.S. products by 2025. The clock is running! Legislation regarding JSA operations need not be pursued unless and until NOAA is successful in creating legislative authority for its administration of aquaculture and an actual developing marine aquaculture industry comes to fruition.

Thank you for the opportunity to further comment on the Commission on Ocean Policy Final Report. Please do not hesitate to contact us if there are any questions.

Very truly yours,

A handwritten signature in blue ink that reads "John R. MacMillan". The signature is written in a cursive, flowing style.

John R. MacMillan, Ph.D.
President
